

PUBLIC HEALTH REGULATIONS
DEPARTMENT OF HEALTH, STATE OF HAWAII

CHAPTER 37
WATER POLLUTION CONTROL
and
CHAPTER 37A
WATER QUALITY STANDARDS

Tuesday, July 31, 1973

Presented by Alexander M. Dollar, Ph.D.

For

Frederick C. Erskine, Chairman
Department of Agriculture

My name is Alexander M. Dollar representing Frederick C. Erskine,
Chairman, State Department of Agriculture.

The Department wishes to commend the Department of Health for the
comprehensive revision of Chapter 37. Our review has been limited because of
the extent of change from the present Chapter 37. We note, rather extensive
reference to provisions of PL 92-500 which effectively displaces State of Hawaii
as the primary review agency. We feel strongly that meeting environmental
commitments is the responsibility of the State of Hawaii and that regulations
must reflect our insular needs and not those based on continental requirements.

Careful review and revision to truly reflect the needs of Hawaii is strongly
recommended. We urge restoring the State's role and not the EPA's role in the
language of Chapter 37. This general problem has been addressed in part. Specific
comments on provisions of Chapter 37 are as follows:

Pg. 1 Agrees with HRS 342.

Pg. 2 Any omitted before State Water(s)

Pg. 2 (b) "Wastes" definition deviates from HRS 342-1 (10) and 31 (3)
and (4) and we recommend adoption of the language in HRS
Chapter 342.

(c) The amended language deviates from HRS Chapter 342. We
recommend adoption of the new language and subsequent
revision of HRS Chapter 342 to conform.

- Pg. 3 (d) State Waters definition deviates from HRS 342. We recommend retention of the language in HRS 342 amended to read; "provided that drainage ditches, canals, ponds, reservoirs and ground waters required as part of a pollution control system or irrigation system are excluded." This recommended change would be consistent with the intent of later sections of Chapter 37 and 37A and PL 92-500 and would allow standard practices such as recycling waste water and nutrient enrichment of irrigation waters where no subsequent tailwater discharges will occur.
- Pg. 3 (e) Definition of "Person" should use the language as given in HRS 342 - 1 (6).
- Pg. 3 (f) "Director" - definition deviates from HRS 342 1 (3).
We recommend language of HRS 342.
- Pg. 7 Section 2 - General Policy of Water Quality Standards
Omits the first paragraph of the present Chapter 37. This change is consistent with the intent of HRS 342.
- Pg.10 Section 3 - Application for NPDES Permit
Revises sections and reverses sections 3 and 4 of the present Chapter 37. It is recommended that the prohibition statement be restored and precede the permit sections.
- Pg.12 Section 3 (e) (2) Provides for transfer from one person to another and (3) provides for transfer from one permanent location to another. It should be noted that these sections on transfer are not permitted under the provisions of Section 17 "NPDES Permit Non-Transferable" on page 38. It is recommended that this discrepancy be corrected by amending Section 17 to recognize

conditions acceptable for transfer.

Pg. 55 Section 26 (c) Second sentence should be corrected to read

Variable effluent - - - -.

CHAPTER 37A deviates in many respects from the language and intent of Chapter 342 HRS. The Department wishes to express strong disagreement with the change of the term "Variance" to "Zone of Mixing". This concern was amply expressed by all concerned groups at the time of hearings preceeding enactment of HRS 342. We urge careful consideration and review and revision of the sections wherever the term "Zone of Mixing" appears.

There are a number of problem areas which should be considered:

Section 3. CLASSIFICATION OF WATER USES

A. 1. Class AA waters and

2. Class A waters and subsequent sections the statement "the support and propagation of shell fish and other marine life etc."

contains many problems. For example, if support means natural support then artificial propagation and culture of aquatic organisms would be a prohibited practice since nutrient enrichment would be practiced.

3. Class B waters

The term "compatible recreation" requires clarification. For example, would water craft powered by internal combustion engines using external cooling water muffling of exhausts be prohibited or would taking of fish be an acceptable water sports activity.

Clarification of these ambiguous terms is required.

Section 4. ZONES OF MIXING

This term should be changed to read "Variance" to conform with the language of HRS 342-7. The Department of Agriculture recommends restoration of

4.
the language and intent of HRS 342.

Section 5. CLASSIFICATION AND ESTABLISHMENT OF WATER AREAS

These sections applicable to "Coastal Water Areas and Non-Tidal Brackish and Saline Water Areas" would apply to areas which could play a significant role in commercial culture of aquatic organism and with preservation or conservation habitats. These activities would be severely constrained unless the language or definitions clearly describe that such activities are permitted practices. For example, Fish Farms Hawaii on Maui would be seriously affected by adoption of this language. Furthermore, Kanaka pond/and similar areas would be dried up because these ponds depend upon influx of surface ground percolation of irrigation water to maintain water levels and quality. Furthermore, the language in this section for each island should be revised to a more uniform format. This suggested change in editorial style would be desirable but not essential.

Section 5. B. Fresh Water Areas

2. Class 2 waters

The language in this section poses a particular problem when irrigation systems are considered. We recommend the section be amended to read "all fresh water streams, canals, ponds, lakes, reservoirs and rivers on all islands whether publicly or privately owned" by adding - and not solely part of an irrigation supply system not included in Class

1.

Section 6. WATER QUALITY STANDARDS

B. Specific Standards Applicable to Particular Water Areas

3. Nutrient Materials

This section requires careful review --to be consistent with the changes in language in other sections. Many ground waters both fresh and saline and irrigation supply systems will fail to meet

these standards. Furthermore, some of the values are not reasonable for some natural water systems virtually free of the influence of man, i.e., swamps, ocean, etc.

Section 7. ZONES OF MIXING

Should be changed to read

VARIANCE TO CONFORM TO HRS 342

This section should be amended to reflect acceptability of applying "best practicable treatment" and avoid the use of the term best available treatment. This change is needed because best available treatment may be economically impossible such as requiring the very expensive and impractical use of distillation, ion exchange or other highly sophisticated processes which are available as treatment but certainly not economically feasible.

- (f) 3) Every zone of mixing granted under this section shall include conditions, etc. The use of shall would mandate that a program of research will be a condition of approval. There are many instances where a program of research may be totally irrational and patently impossible and yet the sections sets forth such a program as a prerequisite to a permit. This section should be amended to give the director latitude in requiring a program of research.
- (j) The zone of mixing or variance should be part of the NDPES permit and should not be treated separately. This change is recommended because the use of a variance is the method chosen by the State in HRS 342 to achieve its standards.
- (k) The Director, on his own motion, or upon the application of any person shall terminate a zone of mixing if etc.
 "the new discharge did not recieve the best available demonstrated

pollution control technology - - -

This provision will prove impossible. For example, a process may be demonstrated under conditions not resembling our own such as in the Arctic or it may prove to be economically non-feasible and yet expose the State to legal action. We recommend careful consideration of such a provision and urge that "available" be changed to read "practicable".

Thank you for considering our comments. We favor any rational regulation which recognizes our own peculiarities and are not shaded to meet the requirements of large land masses. Our own particular environment is highly responsive to changes which would not be significant elsewhere.

We recommend that our regulations reflect our own particular conditions to assure that our environmental interests are satisfied.

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